

RICHARD BRZECZEK

December 20, 2018

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4 DANIEL ANDERSEN,)
5 Plaintiff,)
6 v.) Case No.: 16 CV 1963
7 CITY OF CHICAGO, et al.,)
8 Defendants.)

9 The videotaped deposition of
10 RICHARD J. BRZECZEK, called by the plaintiff for examination
11 pursuant to notice and pursuant to the Rules of Civil Procedure
12 for the United States District Courts pertaining to the taking
13 of depositions, taken before Devan J. Moore, a certified
14 shorthand reporter within and for the County of Cook and State
15 of Illinois, at 20 South Clark Street, Suite 1700, Chicago,
16 Illinois, on the 20th day of December 2018.

RICHARD BRZECZEK

December 20, 2018

<p>1 APPEARANCES:</p> <p>2 LOEVY & LOEVY, by</p> <p>3 MS. HEATHER LEWIS DONNELL</p> <p>4 311 North Aberdeen Street</p> <p>5 3rd Floor</p> <p>6 Chicago, IL 60607</p> <p>7 (312)957-8722</p> <p>8 for the plaintiff;</p> <p>9 BORKAN & SCAHILL, LTD., by</p> <p>10 MS. MISHA ITCHHAPORIA</p> <p>11 20 South Clark Street</p> <p>12 Suite 1700</p> <p>13 Chicago, IL 60603</p> <p>14 (312) 580-1030</p> <p>15 for the individual</p> <p>16 defendant officers;</p> <p>17 ROCK FUSCO & CONNELLY, LLC, by</p> <p>18 MS. STACY A. BENJAMIN</p> <p>19 321 North Clark Street</p> <p>20 Chicago, IL 60654</p> <p>21 (312) 494-1000</p> <p>22 for the defendant</p> <p>23 City of Chicago.</p> <p>24</p> <p>ALSO PRESENT:</p> <p>Mr. Scott Johnson, videographer.</p>	<p>Page 2</p> <p>1 THE VIDEOGRAPHER: This is the videotaped deposition of</p> <p>2 Richard Brzeczke being taken in the matter of Andersen versus</p> <p>3 City of Chicago, et al., Case No. 16 CV 1963. This deposition</p> <p>4 is taking place at 20 South Clark Street, December 20th, 2018.</p> <p>5 The time is 3:07 p.m.</p> <p>6 My name is Scott Johnson. I'm the</p> <p>7 videographer with U.S. Legal Support, located at 200 West</p> <p>8 Jackson Boulevard, Chicago, Illinois. The court reporter today</p> <p>9 is Devan Moore. A video and audio recording will be taking</p> <p>10 place unless all parties have agreed to go off the record.</p> <p>11 Would counsel please state their names for the</p> <p>12 record?</p> <p>13 MS. ITCHHAPORIA: Misha Itchhaporia for the individual</p> <p>14 defendant officers.</p> <p>15 MS. BENJAMIN: Stacy Benjamin for defendant, City of</p> <p>16 Chicago.</p> <p>17 MS. DONNELL: Heather Lewis Donnell on behalf of the</p> <p>18 plaintiff, Daniel Andersen.</p> <p>19 THE VIDEOGRAPHER: Will the court reporter please swear</p> <p>20 in the witness?</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>1 I N D E X</p> <p>2</p> <p>3 Witnesses: Page</p> <p>4 Brzeczke</p> <p>5 Examination by:</p> <p>6 Ms. Itchhaporia 5</p> <p>7 Ms. Benjamin 52</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 E X H I B I T S</p> <p>13</p> <p>14 Number Page</p> <p>15 Brzeczke Deposition Exhibit No. 9 19</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 3</p> <p>1 (Witness sworn.)</p> <p>2 RICHARD J. BRZECZEK,</p> <p>3 called as a witness herein, having been first duly sworn, was</p> <p>4 examined and testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY</p> <p>7 MS. ITCHHAPORIA:</p> <p>8 Q Mr. Brzeczke, have you reviewed any materials</p> <p>9 relating to this case since November 29th, 2018, which was the</p> <p>10 first part of your deposition, to today's date?</p> <p>11 A Yes.</p> <p>12 Q What did you review?</p> <p>13 A Based upon the questions that you asked me about</p> <p>14 the Diane Diaz Grabowski statement taken by Sheila Murphy, I</p> <p>15 reviewed that. And based upon the questions that you asked me</p> <p>16 about Detective Higgins, I looked at his deposition.</p> <p>17 And it wasn't the complete one that I had, but</p> <p>18 it was like 352 pages of his initial deposition time, from the</p> <p>19 beginning to the end. I just kind of skimmed over it to see if</p> <p>20 there was anything in there that would be helpful for me to</p> <p>21 answer any other questions that you may have about Higgins.</p> <p>22 Those would be the two that I looked at.</p> <p>23 Q Okay. So are you saying that you looked at the</p> <p>24 same deposition transcript from Mr. Higgins that you had</p>
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<p style="text-align: right;">Page 6</p> <p>1 provided on the flash drive?</p> <p>2 A I did. But remember my testimony was and my report</p> <p>3 said it was selective portions of Higgins' deposition; so I</p> <p>4 re-read the thing from beginning to end.</p> <p>5 Q Did you take any notes on the deposition, or the</p> <p>6 statement, of Ms. Diaz?</p> <p>7 A No, other than a couple of things that I committed</p> <p>8 to memory.</p> <p>9 Q And was Ms. Diaz's statement something that was</p> <p>10 provided to you since the first part of your deposition?</p> <p>11 A I asked Counsel for a copy of that statement. And</p> <p>12 I did not ask for a copy of the Higgins deposition. I just</p> <p>13 read what was previously given to me. As I said, I think it</p> <p>14 was like 352 pages. It could be more. It could be less; but I</p> <p>15 know it was incomplete because at the end they cut it off. He</p> <p>16 said he was tired or something, and they cut it off. So I know</p> <p>17 it wasn't a complete deposition, but it was the substantial</p> <p>18 majority of it.</p> <p>19 Q And so other than Ms. Diaz's statement and</p> <p>20 reviewing the entirety of Higgins' deposition that was 352</p> <p>21 pages, did you review anything else related to this case from</p> <p>22 the first part of your deposition to today's date?</p> <p>23 A I think I looked at my report one more time.</p> <p>24 That's it.</p>	<p style="text-align: right;">Page 8</p> <p>1 A No, I don't think so. I have no rec- -- I'm trying</p> <p>2 to remember looking at transcripts so I'm not confused if</p> <p>3 they're a deposition or trial. I have no recollection of</p> <p>4 looking at trial transcripts.</p> <p>5 Q And it's not included in your report under the list</p> <p>6 of documents that you've reviewed, so it's not something that</p> <p>7 you've reviewed to render your opinions in this case?</p> <p>8 A No. No.</p> <p>9 Q And you did not review Mr. Andersen's</p> <p>10 court-reported statement; correct?</p> <p>11 A No. I reviewed nothing but Andersen, whether his</p> <p>12 confession was a court-reported statement or any subsequent</p> <p>13 court-reported statements given by him.</p> <p>14 Q Okay. I'm going to hand to you what we've</p> <p>15 previously marked as Brzeczek 3 to the first part of your</p> <p>16 deposition, which is your report.</p> <p>17 (Whereupon, Brzeczek Deposition</p> <p>18 Exhibit No. 3 was tendered to the</p> <p>19 witness.)</p> <p>20 BY MS. ITCHHAPORIA:</p> <p>21 Q I just want to turn your attention to Paragraph</p> <p>22 2 -- oh, I'm sorry -- Paragraph 3 of your report. On the first</p> <p>23 page there, there's a sentence in the middle of Paragraph 3</p> <p>24 where you state, "The detectives did not report as to whether</p>
<p style="text-align: right;">Page 7</p> <p>1 Q Okay. And so, in preparation -- or strike that.</p> <p>2 You did not review the deposition transcript</p> <p>3 of Frank Legace; correct?</p> <p>4 A No, I did not.</p> <p>5 Q You did not review the deposition transcript of</p> <p>6 Michael Riley; correct?</p> <p>7 A No.</p> <p>8 Q You did not review the deposition transcript of</p> <p>9 James Bernarkiewicz; correct?</p> <p>10 A Bernarkiewicz? No.</p> <p>11 Q You did not review the deposition transcript of</p> <p>12 Paul Nielsen?</p> <p>13 A No.</p> <p>14 Q Did you review the deposition of Craig Cegielski?</p> <p>15 A No.</p> <p>16 Q You did not review the deposition transcripts of</p> <p>17 Sheila Murphy either; correct?</p> <p>18 A No.</p> <p>19 Q And you did not review any of the transcripts from</p> <p>20 the pre-trial hearing in the criminal case involving Daniel</p> <p>21 Andersen?</p> <p>22 A No.</p> <p>23 Q And you did not review the transcripts from the</p> <p>24 criminal trial in Peoples versus Andersen either; correct?</p>	<p style="text-align: right;">Page 9</p> <p>1 or not they asked Legace if he knew Trunko".</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q And we looked at Mr. Stout's polygraph case report</p> <p>5 last time, and it was documented in Mr. Stout's polygraph case</p> <p>6 report that Legace had known Trunko for 2 days.</p> <p>7 Do you remember that?</p> <p>8 A Yes. I can recall that, yeah.</p> <p>9 Q Now, it's possible that Detective Bedran did in</p> <p>10 fact ask Mr. Legace if he knew the victim Trunko and just</p> <p>11 didn't put that information in his report; correct?</p> <p>12 MS. DONNELL: Objection. Calls for speculation.</p> <p>13 THE WITNESS: The only thing I know is that the detective</p> <p>14 that you mentioned, or any other detective, did not put</p> <p>15 anything about that in any of their reports. Whether it's</p> <p>16 possible, I don't know. It would be speculation. But I saw</p> <p>17 nothing. I was only relying upon the detective reports.</p> <p>18 BY ITCHHAPORIA:</p> <p>19 Q And last time we looked at that report, and it was</p> <p>20 Detective Bedran that had interviewed Mr. Legace on January</p> <p>21 20th, 1980. Do you remember looking at that report?</p> <p>22 A I think, yes, I do. That's the one where --</p> <p>23 Is that the report where it says that Legace</p> <p>24 confirmed the telephone conversation that Diaz talked about to</p>

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<p style="text-align: right;">Page 10</p> <p>1 the detectives?</p> <p>2 Q Right. It's essentially that, yes. And we marked</p> <p>3 it as Exhibit 5, I believe, at your deposition last time.</p> <p>4 A Okay. That's -- I remember that.</p> <p>5 Q Do you agree that the absence of information in a</p> <p>6 police report does not mean that a question was not asked of</p> <p>7 the witness?</p> <p>8 MS. DONNELL: Objection. Incomplete hypothetical. It</p> <p>9 calls for speculation.</p> <p>10 THE WITNESS: Just repeat the question.</p> <p>11 MS. ITCHHAPORIA: Sure. Can you...?</p> <p>12 THE WITNESS: Will you read it back to me?</p> <p>13 (Whereupon, the record was read as</p> <p>14 requested.)</p> <p>15 THE WITNESS: That's one possibility, yes.</p> <p>16 BY MS. ITCHHAPORIA:</p> <p>17 Q Do you agree that in 1980 that the -- that</p> <p>18 detectives had discretion about information that they should</p> <p>19 include in their supplementary reports?</p> <p>20 A When you say, "discretion", it was not unbridled</p> <p>21 discretion. The discretion was pertinent information versus</p> <p>22 non-pertinent information.</p> <p>23 Q And we talked about this last time, but there was</p> <p>24 no general order, or law enforcement standard, or special order</p>	<p style="text-align: right;">Page 12</p> <p>1 A As far as my personally knowing if Legace told that</p> <p>2 same information to detectives as he told Stout, the answer is,</p> <p>3 yes, I do not know. I just know it was not recorded. Stout</p> <p>4 recorded it. Detectives did not.</p> <p>5 Q And so would you agree that if Mr. Legace never</p> <p>6 told the detectives the information that he relayed to Stout</p> <p>7 during his pre-test, then you wouldn't expect to see a report</p> <p>8 documenting that information?</p> <p>9 MS. DONNELL: Objection. Calls for speculation.</p> <p>10 THE WITNESS: If Legace did not tell the detectives, the</p> <p>11 answer would be, yes, I would not expect that to be in the</p> <p>12 report because I do not know how the detectives would have</p> <p>13 known that from Legace. But I understand the detectives</p> <p>14 learned that from Stout.</p> <p>15 BY MS. ITCHHAPORIA:</p> <p>16 Q And isn't it true that, in your experience as a</p> <p>17 police officer, the witness oftentimes relays bits and pieces</p> <p>18 of information to the police?</p> <p>19 A Well, yes, that's true. When you talk about a</p> <p>20 witness, witnesses will relay bits and pieces based upon their</p> <p>21 own perceptions.</p> <p>22 Q And isn't it also true in your experience as a</p> <p>23 police officer that a witness may hold back information from</p> <p>24 the police?</p>
<p style="text-align: right;">Page 11</p> <p>1 that defined the term "pertinent information" that was in</p> <p>2 effect in 1980; correct?</p> <p>3 A I'm not sure if that term was specifically defined</p> <p>4 in any Department directive, but that was the word that was</p> <p>5 used repeatedly in preparing reports, is that you include</p> <p>6 "pertinent information".</p> <p>7 And I think that I read in Higgins'</p> <p>8 deposition, you know, answer the questions: Who? What? Where?</p> <p>9 When? Why? And how? You know, that has been repeatedly</p> <p>10 drilled into police officers' heads during the pre-service</p> <p>11 Academy and into detectives during the pre-service detective</p> <p>12 training.</p> <p>13 Q Now, in Paragraph 5 of your report, on the second</p> <p>14 page you talk about the pre-test interview that Mr. Stout</p> <p>15 conducted of Mr. Legace; and you indicated in your report that</p> <p>16 Legace provided the examiner with information that was nowhere</p> <p>17 to be found in any of the reports of the detectives in the</p> <p>18 Trunko homicide investigative file.</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q Now, you have no idea if Mr. Legace relayed this</p> <p>22 same information that he gave to Stout during the pretest to</p> <p>23 Detectives Bedran and Rochowicz, who took him to get</p> <p>24 polygraphed; correct?</p>	<p style="text-align: right;">Page 13</p> <p>1 A Yes.</p> <p>2 Q In 1980, do you agree that it was acceptable for a</p> <p>3 detective to convey information that he learned from a witness</p> <p>4 or a suspect to Person A, and then for Person A to document</p> <p>5 that information in a police report?</p> <p>6 MS. DONNELL: Objection. Incomplete hypothetical.</p> <p>7 THE WITNESS: So I understand it, if a detective got</p> <p>8 information from Person A, he could relate that information</p> <p>9 verbally to another detective who could incorporate it in the</p> <p>10 report? Is that what you're asking?</p> <p>11 MS. ITCHHAPORIA: No. No. So let me do it again.</p> <p>12 BY MS. ITCHHAPORIA:</p> <p>13 Q So in 1980, would it be acceptable for a detective</p> <p>14 to convey information that he learned from a witness or a</p> <p>15 suspect to Person A and then Person A document that information</p> <p>16 in a police report?</p> <p>17 A Who is Person A?</p> <p>18 Q Anybody. Just Person A, Person A who is going to</p> <p>19 document that information in a police report.</p> <p>20 A So Person A would have to be some sworn officer in</p> <p>21 a department.</p> <p>22 Q Okay. Let's say a polygraph examiner.</p> <p>23 A Well, okay, in that case, yes, he could learn</p> <p>24 information and pass it on to the polygraph examiner; but at</p>

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<p style="text-align: right;">Page 14</p> <p>1 some point in time that detective learning that information 2 would be required to document it.</p> <p>3 Q Required based on what?</p> <p>4 A Based upon the recording requirements placed upon 5 detectives in 1980.</p> <p>6 Q And what was that recording requirement?</p> <p>7 A They're contained in the Standard Operating 8 Procedure and other Department directives that are in the 9 current possession of the City defendant in this case. I don't 10 have those documents with me now. And they may be regarded 11 historical documents because of changes, but those documents 12 are preserved on a historical basis.</p> <p>13 So if you want to know exactly which documents 14 I'm talking about, in addition to the one that I identified as 15 the Standard Operating Procedural Manual, the City defendant 16 would have all of those documents in its archives.</p> <p>17 Q The Standard Operating Procedure Manual?</p> <p>18 A Yeah. It was written in the early 1970s. So put 19 it this way: It was published in the early 1970s, and it was 20 call the Criminal Investigation Division Standard Operating 21 Procedures, and --</p> <p>22 Q So --</p> <p>23 MS. DONNELL: Hold on just a second, Misha.</p> <p>24 THE WITNESS: And it may have undergone a name-change,</p>	<p style="text-align: right;">Page 16</p> <p>1 requirement on detectives that they carry handcuffs. And 2 that's just one there.</p> <p>3 There was a chapter in there on conducting 4 line-ups, a chapter in there on conducting photo identification 5 line-ups.</p> <p>6 Q Was there a chapter for report writing for 7 detectives?</p> <p>8 A Yes.</p> <p>9 Q Were you involved in the writing of the Standard 10 Operating Manual?</p> <p>11 A Yes, I was.</p> <p>12 Q In what year?</p> <p>13 A Again, it's going to be 1970/1971.</p> <p>14 Q What portion of it did you draft?</p> <p>15 A Well, I drafted some of the administrative 16 portions. I drafted the portions on line-ups. I drafted the 17 portions on identifications. I'm trying to remember, because I 18 haven't seen that manual in 35-plus years. I think I may have 19 also drafted anything having to do with statements, 20 confessions, things like that.</p> <p>21 I also was responsible for taking the drafts 22 submitted by peers of mine from other units, like auto theft 23 and burglary, as to what they submitted; and I was responsible 24 for the overall editing of those chapters.</p>
<p style="text-align: right;">Page 15</p> <p>1 because in 1980 I changed the name from Criminal Investigation 2 Division back to Detective Division. So it may have undergone 3 a name-change somewhere around 1980/'81.</p> <p>4 But that was the procedural manual for 5 procedures to be followed by detectives in connection with 6 their official duties, which included reporting.</p> <p>7 BY MS. ITCHHAPORIA:</p> <p>8 Q Do you know what the name may have changed to in 9 1980?</p> <p>10 A As I testified to, the Detective Division Standard 11 Operating Procedures.</p> <p>12 Q Were you also -- did you also --</p> <p>13 A Now, when I say, "1980", keep in mind that the date 14 in question here, January 19th, is 8 days before I became 15 superintendent- -- after I became superintendent. And I can 16 tell you with absolute certainty I did not change that name in 17 the first 8 days. It happened either in late 1980, early 1981.</p> <p>18 Q This Standard Operating Manual (sic) that applied 19 to detectives, was it organized in chapters? Sections?</p> <p>20 A It was organized in chapters. For example, there 21 was a chapter on handcuffs. Because, believe it or not, in 22 1980 -- excuse me -- in 1970 uniformed officers were not 23 required to carry handcuffs. No officers were required to 24 carry handcuffs. Detectives were then made -- it put a</p>	<p style="text-align: right;">Page 17</p> <p>1 Q When was the last time that you saw the Detective 2 Division Standard Operating Manual?</p> <p>3 A I said over 35 years ago.</p> <p>4 Q You did not review that document to prepare your 5 expert report in this case; correct?</p> <p>6 A No. I have not seen that document in over 35 7 years.</p> <p>8 Q What did the Detective Division Standard Operating 9 Manual say about report writing as it relates to detectives 10 specifically?</p> <p>11 A I think it dealt with -- in my recollection, it 12 dealt with the necessity for preparing qualitative reports and 13 reporting facts of the investigation.</p> <p>14 Keep in mind that the Brady Requirement -- 15 that's B-R-A-D-Y. The Brady requirement came in in 1963, so it 16 was pretty well-established law in terms of, you know, 17 exculpatory information to be provided likewise.</p> <p>18 Q Do you have a specific memory of what the Detective 19 Division Standard Operating Manual said about report writing as 20 it relates to detectives?</p> <p>21 A It only -- it only related to report writing as it 22 relates to detectives. It did not have any provisions for 23 report writing for patrol officers or officers -- say, even if 24 they were detectives in the Intelligence Division or in the</p>

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<p style="text-align: right;">Page 18</p> <p>1 Vice Control Division at that time, or anyplace else. It was 2 strictly for the Detective Division.</p> <p>3 Q Okay. Do you have a specific memory of what any 4 portion of that report writing section said, like explicitly?</p> <p>5 A No, I do not have a specific memory.</p> <p>6 Q Let's move on to Paragraph 7, which -- on Page 3, 7 but which we talked about last time really should be numbered 8 Paragraph 9.</p> <p>9 A Okay. That's correct.</p> <p>10 Q Do you see in there there's a sentence in the 11 middle of that paragraph that states, "There's no reference in 12 the officers' report as to how they received this information 13 or from whom and when"? And this is referring to Andersen 14 having a gun. Do you see that?</p> <p>15 A That's correct.</p> <p>16 Q And you testified at Part 1 of your deposition that 17 the Standard Reporting Procedures for police officers that was 18 in effect in 1980 required police officers to document the 19 source of the information?</p> <p>20 A That's correct.</p> <p>21 Q And I believe you testified at Part 1 of your 22 deposition that the Standard Reporting Procedures for police -- 23 for police officers that was in effect in 1980 was called the 24 Field Reporting Manual?</p>	<p style="text-align: right;">Page 20</p> <p>1 Q Mr. Brzeczek, I'm handing to you what's been marked 2 as Exhibit 9 for your deposition. Can you identify this 3 document for me, please?</p> <p>4 A Exhibit No. 9 is entitled Chicago Police Field 5 Reporting Manual General Reporting Instructions.</p> <p>6 Q And is this the Field Reporting Manual that you 7 were referring to during the first part of your deposition?</p> <p>8 A This is the Field Reporting Manual. This document 9 that you gave me became effective in July of 1975. And you can 10 tell that from the information contained in the lower left-hand 11 corner on the first page, because it gives a CPD form number, 12 63.450; and in parentheses "7/75" is the month and year of 13 issuance.</p> <p>14 I'm not sure how many of these during my 15 career have been issued, but I will tell you that there was a 16 predecessor document like this in 1964 when I became a police 17 officer.</p> <p>18 Q And the Field Reporting Manual is an instructional 19 manual; correct?</p> <p>20 A Well, the Field Reporting Manual is not an 21 instructional manual. The Field Reporting Manual is the 22 guidelines by which case reports by police officers are to be 23 prepared.</p> <p>24 Q The Field Reporting Manual was provided to recruit</p>
<p style="text-align: right;">Page 19</p> <p>1 A That's correct.</p> <p>2 Q And I think you said that it was beat officers that 3 should have put in their supplementary report where they got 4 the information that Andersen had a gun, and that was per the 5 Field Reporting Manual; is that right?</p> <p>6 A Well, the Field Manual would require them either, 7 A, to submit a supplementary report in connection with the 8 Cathy Trunko murder, if that would be the appropriate way to 9 report the incident. But if they got a call, at the time, of 10 somebody having a gun, that could have necessitated the 11 preparation of a new original case report under a separate RD 12 number, or Records Division number.</p> <p>13 So I'm not addressing the fact as to whether 14 or not they should have prepared a new case report or a 15 supplementary report. I'm talking about whatever report they 16 prepared should have contained the information as to how they 17 got the information about the gun, from where they got it. 18 Again, it goes back to the who, what, why, when, where and how 19 questions that I recall Detective Higgins testifying to.</p> <p>20 MS. ITCHHAPORIA: If you can mark that as 9, please. 21 (Whereupon, Brzeczek Deposition 22 Exhibit No. 9 was marked for 23 identification.) 24 BY MS. ITCHHAPORIA:</p>	<p style="text-align: right;">Page 21</p> <p>1 police officers in the Academy; is that correct?</p> <p>2 A That's correct. Each individual officer received a 3 copy of the Field Reporting Manual.</p> <p>4 Q And the -- it was --</p> <p>5 The Field Reporting Manual is the instructions 6 manual for the preparation of case reports in the Department?</p> <p>7 A It is the policy and guideline to be followed. 8 When you use the word, "instructional manual", I found in my 9 experience that instructions on how to use the Field Reporting 10 Manual, how to prepare these reports, were contained in 11 instructional materials that were provided to the officers in 12 the Academy.</p> <p>13 And then there was something at that time 14 called training bulletins, and training bulletins addressed 15 reporting instructions. In other words, let's say -- to use 16 the lawyers' terms, they would annotate. The training 17 bulletins would annotate these policy guidelines and say, "This 18 is the way you do it".</p> <p>19 Q Mr. Brzeczek, I don't have much time. So I would 20 appreciate if you'd just answer the question that I'm 21 specifically posing to you and not expand, because that's just 22 going to eat into my time.</p> <p>23 MS. DONNELL: I'm just going to object, Misha, because he 24 did answer your question. He was telling you why he's not</p>

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<p style="text-align: right;">Page 22</p> <p>1 using the term "instruction manual", and he just defined what 2 the distinction --</p> <p>3 MS. ITCHHAPORIA: Okay. Well, Heather, I'm going to 4 disagree. And I think that's a speaking objection.</p> <p>5 MS. DONNELL: It's not a speaking objection.</p> <p>6 MS. ITCHHAPORIA: You can object to form, then.</p> <p>7 MS. DONNELL: You're interrupting me. And I'm allowed to 8 make my record, too; so please don't interrupt me.</p> <p>9 What I'm saying is that I don't think that 10 your instructions to the witness were appropriate. He's 11 answering the questions. And we can proceed; but he was 12 absolutely being responsive to your question.</p> <p>13 BY MS. ITCHHAPORIA:</p> <p>14 Q Yes or no, Mr. Brzeczek, the Field Reporting Manual 15 is the instructions manual for the preparation of case reports 16 in the Chicago Police Department?</p> <p>17 A In the broader sense of the word "instruction", 18 yes.</p> <p>19 Q And case reports are those which are prepared in 20 connection with crimes being reported to the Chicago Police 21 Department; correct?</p> <p>22 A Yes.</p> <p>23 Q Now, looking at Exhibit 9, the Field Reporting 24 Manual, where does it say in here that police officers are</p>	<p style="text-align: right;">Page 24</p> <p>1 Q There's nothing in that section that you just read 2 that explicitly states that a uniformed patrol officer is 3 required to document in a police report from where or how they 4 got information?</p> <p>5 A Yes, there is.</p> <p>6 Q It explicitly states that in Paragraph A1?</p> <p>7 A Yes. The word "pertinent", as I've been testifying 8 to. It doesn't recite every time that you're going to -- this 9 is not kindergarten where you recite -- you're going to answer 10 the questions who, what, when, where, why and how to every 11 item. It just simply says, "pertinent information".</p> <p>12 Q That section that we just looked at, Instruction A, 13 Arabic 1, does not say anything about who, what, why, or where; 14 does it?</p> <p>15 A No, because that's in a different manual, as I 16 testified to before, regarding training bulletins and Academy 17 instructional materials.</p> <p>18 Q I want to go back to that manual that you were 19 talking about, the Detective Division Standard Operating 20 Manual, that previously may have been called --</p> <p>21 What did you say it was? It may have been 22 called, the Criminal --</p> <p>23 A The Criminal Investigation Division Manual. It was 24 simply, you know, a change in the name. That's all it is.</p>
<p style="text-align: right;">Page 23</p> <p>1 required to document in a report who they receive information 2 from and how?</p> <p>3 A Do you want me to take time to read this whole 4 thing?</p> <p>5 Q Do you need to look -- do you need to look over the 6 whole thing in order to answer that question?</p> <p>7 A Well, I do, because you're asking me where does it 8 say something, and I'm going to look for it, then.</p> <p>9 MS. ITCHHAPORIA: Okay. Well, let's go off the record so 10 you can look at that.</p> <p>11 THE VIDEOGRAPHER: Off the record at 3:34 p.m. 12 (Whereupon, there was a brief pause.)</p> <p>13 THE VIDEOGRAPHER: Back on the record at 3:36 p.m.</p> <p>14 THE WITNESS: Okay. In Exhibit No. 9, on the first page, 15 it would be Roman Numeral I, Field Case Reports. Then under 16 that, "A: Introduction. And then Arabic 1.</p> <p>17 Quote, "A uniformed officer -- excuse me. "A 18 uniformed patrol officer normally is the first to respond to 19 calls for police service and to incidents brought to the 20 attention of the Department. This results in an interview with 21 a complainant or witness to obtain pertinent -- and that's my 22 emphasis -- information."</p> <p>23</p> <p>24 BY MS. ITCHHAPORIA:</p>	<p style="text-align: right;">Page 25</p> <p>1 Q Do you know if that manual was given to detectives 2 in detectives school?</p> <p>3 A That manual was given to every detective who was an 4 existing detective or became a detective from the time of its 5 issuance in either 1970 or '71 until at least the end of my 6 career in April of 1983. What happened thereafter, I have no 7 idea.</p> <p>8 Q Did that document that we're talking about, whether 9 it was called the Criminal Investigation or the Detective 10 Division Standard Operating Manual, explicitly state that 11 detectives were required to document in a police report the 12 reasons why they took someone to get a polygraph test?</p> <p>13 A I can tell you the answer to that question is "no".</p> <p>14 Q Did that document, whatever iteration it was under, 15 Criminal Investigation or Detective Division Standard Operating 16 Manual, explicitly state that police officers were required -- 17 or sorry -- detectives were required to document in a police 18 report the reasons why they personally believed someone was a 19 suspect?</p> <p>20 A Using that language, per se, the answer is, no.</p> <p>21 Q And did that document, in 1980, require detectives 22 to document in a physical report the -- any distinguishing 23 marks or features of a suspect or witness that was interviewed?</p> <p>24 A I'm not sure if it's in that Standard Operating</p>

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<p style="text-align: right;">Page 26</p> <p>1 Procedures document or in another document, but the answer to 2 that question is, yes. You put down the characteristics of a 3 suspect in a crime; and that is, the physical characteristics. 4 Q What does the Manual specifically say about a 5 detective's -- that mandates a detective to document in a 6 police report the physical appearance of a witness or a 7 suspect? 8 A I said I'm not sure if that Manual says it by 9 itself, but there are other documents that placed that 10 reporting requirement on detectives. 11 Q Right. But I'm talking about that specific manual, 12 so I don't care about any other document right now. I'm talking 13 about the Criminal Investigation Division Standard Operating 14 Procedure. Does that -- did that, in 1980, explicitly state 15 that detectives were required to document in a police report 16 the physical appearance or distinguishing marks or features of 17 a suspect or a witness? 18 A The only answer I can give you that's honest at 19 this point is, I do not recall. 20 Q Now, you testified at the first part of your 21 deposition last time that you did not review the portion of 22 Ms. Diaz's deposition testimony where she testified that she 23 never told the police that Bob Legace left the tavern to go and 24 attempt to pick up Ms. Cathy Trunko?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q You note in Paragraph 8 -- or what really should be 2 numbered as 10 in your report -- on Page 3 there, the last 3 sentence says, "There's no mention of any visible scars on the 4 face and/or neck of Legace by the detectives." 5 Do you see that? 6 A That's correct. 7 Q And when you say, "detectives" there, which 8 detectives are you referring to? 9 A Any detective that was assigned to the case who 10 happened to see Legace. 11 Q Do you know which detectives that were involved in 12 the Cathy Trunko homicide investigation saw or interacted with 13 Mr. Legace? 14 A Well, I know Bedran and Rochowicz did. I know that 15 Higgins did. Those are the ones that I can remember. 16 Q What's your basis for saying that Higgins 17 interacted or saw Mr. Legace back in 1980 during the Trunko 18 homicide investigation? 19 A According to -- I'm sorry. I'm sorry. Take 20 Higgins out. I misunderstood the question. It was Bedran and 21 Rochowicz. 22 The reason why I included Higgins is because 23 Danny said somebody had -- this guy Bob had a scar on his face 24 and neck. And I have some recollection -- I thought he told</p>
<p style="text-align: right;">Page 27</p> <p>1 A Yes, I recall that. 2 Q You recall testifying to that? 3 A I recall testifying that I did not read that in her 4 deposition. I'm not saying it's not there. I did not read 5 that part of it. 6 Q Okay. Do you agree with me that, if Ms. Diaz did 7 not tell the detectives that information, which is that Bob 8 Legace left the tavern to go and pick Ms. Trunko up, then that 9 information would not be included in a detective's report? 10 A The answer is, yes, if she did not tell him that or 11 if anyone else did not tell the detectives that. 12 Q Do you -- did you read the portion of Ms. Diaz's 13 deposition testimony where she testified that her memory about 14 the night of Cathy's murder was better in 1981? 15 A Yes. 16 Q Did you read the portion of Ms. Diaz's deposition 17 testimony where she testified that when she was on the phone 18 with Cathy Trunko on the night of Cathy Trunko's murder, 19 January 19th, 1980, that Cathy told her that, quote, "Danny's 20 at the door"? 21 A I don't remember if she said, "Danny's at the 22 door," but I know she's saying Danny is by her house in the 23 yard or something like that; but that somebody by the name of 24 Danny was by her house.</p>	<p style="text-align: right;">Page 29</p> <p>1 that to Higgins; so take Higgins out. I have no idea that 2 Higgins ever saw Legace. 3 Q Okay. So if there was a report that was to be 4 drafted about Legace's features, it would be a report that 5 would have had to be drafted by Bedran and Rochowicz? 6 A Well, if they're the ones that actually saw him. 7 They're the only ones that I know that I could reasonably 8 connect to Legace as having seen him. 9 Q And in reaching that opinion in this report, did 10 you make the assumption that Bob, the one that Andersen had 11 mentioned, who had a scar on his face or neck, was in fact 12 Robert Legace? 13 A I'm not sure if I made the assumption; but I tied 14 in the fact that Diaz said that he had a scar on his face, as I 15 recall. At some point in time she said that. I'm not sure 16 when, but she did say that. 17 Q Are you saying that Bob, who Andersen mentioned, is 18 the same person as Robert Legace? 19 A No. I'm only saying that Bob mentioned by Andersen 20 supposedly had a scar on his face and on his neck. The only 21 Bob that I remember from the reports is Bob Legace. And then 22 somewhere in a document I saw -- or I read that Diaz said that 23 that Legace had a scar on his neck. 24 Q If Robert Legace did not have any visible scar on</p>

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<p style="text-align: right;">Page 30</p> <p>1 his face or neck, then there would be no reason for any</p> <p>2 detective to document that in a report; correct?</p> <p>3 A There would be no reason to document it because you</p> <p>4 generally do not document negatives.</p> <p>5 Q What do you mean by that?</p> <p>6 A Well, for example, let's say in a domestic violence</p> <p>7 situation or in a fight, an assault and battery, if someone</p> <p>8 says that, "I got punched in the eye" or "He hit me in the eye</p> <p>9 with a baseball bat", or something like that, and there's no</p> <p>10 black eye or there's no injury there, you would document that</p> <p>11 because we were trained that, if someone is assaulted and</p> <p>12 there's a physical injury, that there would be some evidence of</p> <p>13 a physical injury.</p> <p>14 So if there is no physical injury to be seen,</p> <p>15 you would document that. That's the kind of negative that you</p> <p>16 would document.</p> <p>17 Q What's the kind of negative that you would not</p> <p>18 document?</p> <p>19 A If you had a suspect and, say, like in this case --</p> <p>20 let's try to grab this one up -- if Danny says he has a scar on</p> <p>21 his neck and on his face and he doesn't, it's not necessary to</p> <p>22 document that because scars don't come and go. If he said the</p> <p>23 guy had a mustache and the suspect doesn't have a mustache, you</p> <p>24 may want to document that because mustaches are removable at</p>	<p style="text-align: right;">Page 32</p> <p>1 death?</p> <p>2 A Are you asking me to take Legace out of being a</p> <p>3 possible suspect because he denies it?</p> <p>4 Q No. I'm asking you if you -- if you're saying that</p> <p>5 Legace may have had something to do with the murder despite his</p> <p>6 responses to Mr. Stout that he did not kill Cathy Trunko and</p> <p>7 did not cause her death?</p> <p>8 A Well, the responses that Legace gave -- or even if</p> <p>9 they weren't responses, they were volunteered statements to</p> <p>10 Stout that, "I didn't kill her" or "I had nothing to do with</p> <p>11 it", that proclamation of innocence is very, very low on most</p> <p>12 detectives' totem poles or responsibility because most people</p> <p>13 will deny having anything to do with a murder or someone's</p> <p>14 murder even though they may be the actual offender.</p> <p>15 Q And in that situation where someone denies being</p> <p>16 involved in a murder, then would you agree that it's okay</p> <p>17 for the detective to keep that person in an interview room to</p> <p>18 question them further about their possible involvement?</p> <p>19 A Well, I think that it would be okay to question</p> <p>20 them further to see how consistent the statements are because</p> <p>21 that's more than a denial that they didn't do it. It's</p> <p>22 generally the inconsistency among the statements coming from</p> <p>23 the potential suspect or witness that leads you to begin to</p> <p>24 focus on somebody.</p>
<p style="text-align: right;">Page 31</p> <p>1 will. Those are the kinds of things.</p> <p>2 Q Looking at the top there, Paragraph 6 -- or 8, on</p> <p>3 Page 3, you state, "Legace may have had something to do with</p> <p>4 the murder, and he was at least a possible suspect".</p> <p>5 Do you see that?</p> <p>6 A Okay. But I think that it's referring back to the</p> <p>7 prior sentence; but I do see that. Okay.</p> <p>8 Q Do you have any factual basis to say that Robert</p> <p>9 Legace killed Cathy Trunko?</p> <p>10 A No.</p> <p>11 Q Are you aware of any physical evidence that</p> <p>12 connects Robert Legace to the murder of Cathy Trunko?</p> <p>13 A No.</p> <p>14 Q So saying that Legace may have had something to do</p> <p>15 with the murder, is that pure speculation on your part?</p> <p>16 A It's not speculation. The information is relative</p> <p>17 to the -- relevant to the investigation because it suggests</p> <p>18 that Legace may have had something to do with the murder and he</p> <p>19 was at least a possible suspect. There's nothing there that I</p> <p>20 said that Legace committed the murder. Everything there was</p> <p>21 possibles.</p> <p>22 Q Are you're saying it's possible even though</p> <p>23 Mr. Legace told Mr. Stout that he was not the one that stabbed</p> <p>24 Cathy Trunko and that he was not responsible for causing her</p>	<p style="text-align: right;">Page 33</p> <p>1 Q You state in that paragraph also, looking at Page</p> <p>2 3, in the last sentence that, "Therefore, based on existing CPD</p> <p>3 policies and procedures, as well as the law, CPD officers and</p> <p>4 detectives who possess this information were required to report</p> <p>5 and disclose it."</p> <p>6 What CPD officers are you referring to in that</p> <p>7 paragraph?</p> <p>8 A I'm talking about CPD policies and procedures and</p> <p>9 the law require all officers and detectives who possess this</p> <p>10 information to record and disclose it. That's all I'm saying</p> <p>11 there. I'm not saying which ones. I'm saying that everybody</p> <p>12 has an obligation to disclose the information.</p> <p>13 Q Okay. But applying that to what we know about the</p> <p>14 facts of this case, because you're saying, "this</p> <p>15 information" -- "this information", being --</p> <p>16 Well, what do you mean by "this information"?</p> <p>17 A Let me go back and read the early part of</p> <p>18 Paragraph 8.</p> <p>19 (Whereupon, there was a brief pause.)</p> <p>20 THE WITNESS: Okay. I think that the recitation in</p> <p>21 Paragraph 8 of Exhibit 3 is information that I lifted from the</p> <p>22 documents that I reviewed. And I began telling -- or taking</p> <p>23 the position, okay, "I do not know what she told the police</p> <p>24 because I wasn't there, but I have reviewed the police reports</p>

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<p style="text-align: right;">Page 34</p> <p>1 and see that none of the foregoing information appears in 2 there," in the report it says. And that is the information 3 that she said she told the police. 4 "If Grabowski -- that's Diaz -- "did actually 5 tell the police any of this information -- I'm just saying if 6 she told the police any of this information -- "the officer 7 receiving the information had to record it into an official 8 police report and make this information part of the file." 9 That's the information I'm talking about. 10 Q Okay. There is no indication that anything that 11 you read that a CPD officer had any interactions with Diaz. It 12 was only Detective Bedran and Rochowicz; correct? 13 MS. DONNELL: Objection, to the extent it calls for 14 speculation. 15 THE WITNESS: Okay. When I talk about, "If Grabowski did 16 actually tell the police any of this information, the officer 17 receiving the information," I made no distinction between 18 "officer" and "detective". 19 "Officer" is a generic term. A detective is 20 an officer. An officer may not be a detective. A sergeant is 21 an officer. A superintendent is an officer, but an officer is 22 not a superintendent. An officer is not a sergeant. Okay? 23 So when I use the word "officer", it's the 24 vernacular that I use to describe everybody across the board.</p>	<p style="text-align: right;">Page 36</p> <p>1 multifaceted issue. Which one maybe are you talking about? 2 Which facet of it? 3 BY MS. ITCHHAPORIA: 4 Q Social sciences, as far as social sciences of false 5 confessions. 6 A You're talking about the research that's done as to 7 why people falsely confess? 8 Q Right. 9 A No, I have no background in that. 10 Q You state on Page 4, under Opinion 1, the last 11 sentence there, "Willfully concealing exculpatory information 12 includes the failure to report the discovery of exculpatory 13 information in routine police reports." 14 What's your basis for this statement? 15 A In my opinion, there is such a focus upon an 16 officer's responsibility, which includes detectives, to report 17 exculpatory information. And the willful concealment of 18 exculpatory information includes the failure to report the 19 discovery of exculpatory information in routine police reports 20 It doesn't have to be -- 21 It doesn't have to be a -- in my opinion -- a 22 willful, knowing, and intentional act. Detectives are 23 professionals. They're trained for their purposes within the 24 scheme of things in the police department; and their failure to</p>
<p style="text-align: right;">Page 35</p> <p>1 I'm not limiting it to rank, or assignment, or anything. I'm 2 talking about the rule is, if you get this information, you're 3 required to record it. 4 BY MS. ITCHHAPORIA: 5 Q Okay. But then on Page 3 then you do make a 6 distinction when you say, "CPD officers and detectives". 7 That's what's confusing to me. So I'm wondering why you make 8 that distinction there. 9 A It's an emphasis, "CPD officers and detectives". 10 Q You're not going to be offering any opinions at 11 trial about the falsity or truthfulness of Mr. Andersen's 12 court-reported statement; correct? 13 A No. 14 Q You don't have any background or training in the 15 area of the phenomena of alleged false confessions; correct? 16 MS. DONNELL: Objection. Form. 17 THE WITNESS: I didn't hear the last part of your 18 question. 19 BY MS. ITCHHAPORIA: 20 Q You don't have any background or training in the 21 area of the phenomena of false confessions; correct? 22 MS. DONNELL: Objection. Form. 23 THE WITNESS: When you say background or training in the 24 area of false confessions, to me false confessions is kind of a</p>	<p style="text-align: right;">Page 37</p> <p>1 include exculpatory information can only be considered willful. 2 Q Are you aware of any studies or authoritative texts 3 that substantiate that opinion that, "Willfully concealing 4 exculpatory information includes the failure to report the 5 discovery of exculpatory information in police reports"? 6 A As far as studies are concerned, I'm not. But I 7 have had exposure to literally hundreds of such situations both 8 when I was a police officer and when I was a defense attorney. 9 Q Putting aside your experience, is there any text 10 that I can go and look at, or journal, or article that 11 substantiates that opinion that you have in this paragraph that 12 we're looking at? 13 A One of the more recent documents that impressed me 14 was a Georgetown Law Review article that I think was published 15 in 2015, and it was written by one of the judges -- one of the 16 then judges in the 9th Circuit regarding prosecutorial 17 misconduct, including the withholding of exculpatory evidence. 18 I found that one to be quite impressive. 19 Q Does that Georgetown Law Review article state that 20 willfully concealing exculpatory information includes the 21 failure to report the discovery of exculpatory information in 22 police reports? 23 A For me to answer -- say -- use those exact words, I 24 do not know.</p>

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<p style="text-align: right;">Page 38</p> <p>1 Q Well, not using those exact words, is that the gist 2 of the article?</p> <p>3 A No, that's not the gist of the article. The gist 4 of the article is more serious, more gullible, more 5 comprehensive than just the failure to report exculpatory 6 information in routine police reports, but it demonstrates that 7 it's part of the problem.</p> <p>8 Q Well, you're saying that you're impressed by that 9 article, but I'm not necessarily concerned with what you're 10 impressed with.</p> <p>11 Does that article, this Georgetown Law Review 12 article from 2015, support your opinion and equate willfully 13 concealing something with failing to report?</p> <p>14 A Yes. And when I say it impresses me, it caught my 15 attention that someone would have written a document of that 16 degree of sophistication regarding this very serious problem.</p> <p>17 Q We talked about last time the scope of your 18 assignment in this case. And it's not within the scope of your 19 assignment, in your expert opinion in this case, to determine 20 whether any of the defendant officers in this case willfully 21 concealed exculpatory information; correct?</p> <p>22 A My understanding of my assignment is to examine 23 what the detectives did in the investigation of the murder of 24 Cathy Trunko; and included in that is what they did not do,</p>	<p style="text-align: right;">Page 40</p> <p>1 talk to each other and they tell each other what's going on 2 more so than what they actually put down on paper.</p> <p>3 So the fact that it was not put down on paper, 4 but that they took Legace for the polygraph exam, I would have 5 to believe that Higgins knew about it.</p> <p>6 Q What's your factual basis for saying that Higgins 7 knew about it?</p> <p>8 A My factual basis is that my experience says, as I 9 told you, that they talked to each other.</p> <p>10 Q Did you read any testimony or anything in this case 11 that indicated that Detective Higgins spoke to Detective Bedran 12 and Rochowicz about taking Mr. Legace to be polygraphed?</p> <p>13 A Now, that's the very essence of the problem. They 14 did not report or document what they were saying to each other 15 or what they did.</p> <p>16 Q Isn't it true that Mr. Higgins testified at his 17 deposition that he was not aware during the Trunko homicide 18 investigation that Detective Bedran and Rochowicz took 19 Mr. Legace to be polygraphed?</p> <p>20 A I remember his testifying to that, and I don't 21 believe him.</p> <p>22 Q So you're making a credibility determination?</p> <p>23 A No, I'm not, because he's the lead detective on the 24 case. He's assigned to the case. And the detectives who are</p>
<p style="text-align: right;">Page 39</p> <p>1 and also in included in there is what they reported and what 2 they did not report.</p> <p>3 MS. ITCHHAPORIA: Can I get my question read back, 4 please?</p> <p>5 (Whereupon, the record was read as 6 requested.)</p> <p>7 THE WITNESS: If my answer didn't satisfy your question, 8 in looking at the fact that Bedran and Rochowicz took Legace to 9 the polygraph operator and failed to report it, the answer is, 10 yes.</p> <p>11 BY MS. ITCHHAPORIA:</p> <p>12 Q Other than those two detectives, are you saying 13 that any other detective in this case willfully concealed 14 exculpatory information?</p> <p>15 A Right now I cannot think of identifying any other 16 detective who may have concealed exculpatory information.</p> <p>17 Q Other than the two detectives that you mentioned, 18 Bedran and Rochowicz, are you saying that any other defendant 19 officer in this case willfully concealed exculpatory 20 information?</p> <p>21 A Well, if you understand how detectives operate, one 22 of the things that -- when you talk about social science, is 23 that they work in environments in their headquarters that are 24 conducive to interpersonal communications; meaning, that they</p>	<p style="text-align: right;">Page 41</p> <p>1 doing investigative work on his case are telling him what 2 they're doing. That's the normal run-of-the-mill 3 investigation. That's how they talk to each other in the squad 4 rooms.</p> <p>5 If they didn't tell him that they took Legace 6 for the polygraph examination, either there's something 7 drastically wrong with the interpersonal communications among 8 the detectives in that Area 3 unit, or they failed to document 9 what took place.</p> <p>10 Q Well, you didn't read anything from Detective 11 Bedran or Rochowicz that indicated that they informed 12 Mr. Higgins that they took Mr. Legace to be polygraphed; 13 correct?</p> <p>14 A No, I did not.</p> <p>15 Q And so the testimony that Mr. Higgins provided in 16 his deposition that he wasn't aware that Bedran and Rochowicz 17 took Legace to be polygraphed, you're disregarding that 18 testimony because you don't believe it?</p> <p>19 A No, I'm not disregarding the testimony. I'm looking 20 at the testimony because he's consistent. He says he didn't 21 know that they took him for a polygraph exam. He didn't know 22 his date of appointment to the police department. He didn't 23 know the date that he retired, so his testimony is consistent 24 about what he doesn't know.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Q But you're saying that you don't believe him</p> <p>2 because he was the lead detective, and detectives talk to each</p> <p>3 other; is that right?</p> <p>4 A He's the lead detective. And when one someone -- I</p> <p>5 think I testified in the first part of my deposition that, at</p> <p>6 that time, there were case assignments. That's contrary to his</p> <p>7 testimony also, that nobody was assigned to the case. He said</p> <p>8 that specifically.</p> <p>9 Somebody is assigned to the case because</p> <p>10 somebody has to be responsible for the case. So somebody's</p> <p>11 name goes onto the case assignment slip. And, in my opinion --</p> <p>12 I haven't seen the case assignment slip; but from reading what</p> <p>13 I did, he's the assigned detective.</p> <p>14 So when other detectives are doing things --</p> <p>15 if you're the lead detective and I'm in your unit and I do</p> <p>16 something, I'm going to tell you what I did; or I'm going to</p> <p>17 write a report, or I'm going to write up a note or something</p> <p>18 for you. I'm going to let you know what we're doing on your</p> <p>19 case.</p> <p>20 Q If Detectives Bedran and Rochowicz did not tell</p> <p>21 Mr. Higgins that they took Robert Legace for a polygraph, do</p> <p>22 you agree that there's no way that Mr. Higgins would have been</p> <p>23 made aware of that?</p> <p>24 MS. DONNELL: Objection. Calls for speculation.</p>	<p style="text-align: right;">Page 44</p> <p>1 MS. DONNELL: Misha, can we take just a quick bathroom</p> <p>2 break?</p> <p>3 MS. ITCHHAPORIA: Sure.</p> <p>4 THE VIDEOGRAPHER: Off the record at 4:11 p.m.</p> <p>5 (Whereupon, a brief recess was taken.)</p> <p>6 THE VIDEOGRAPHER: Back on the record at 4:19 p.m.</p> <p>7 BY MS. ITCHHAPORIA:</p> <p>8 Q You state in Page 5. It's 5C of your opinion.</p> <p>9 You're asking some questions there at the last sentence, "For</p> <p>10 instance, did they follow up on it, conduct any additional</p> <p>11 investigation, disregard it as irrelevant for some reason?"</p> <p>12 And you're talking about the information</p> <p>13 provided by Legace to the polygraph examiner that was then</p> <p>14 relayed to Detective Bedran and Rochowicz. Do you see that?</p> <p>15 A Yes.</p> <p>16 Q There was no policy, or rule, or regulation that</p> <p>17 was in effect in 1980 that required detectives to do follow-up</p> <p>18 investigation; correct?</p> <p>19 A When you say a rule or -- what? A directive?</p> <p>20 Q Rule, directive, regulation.</p> <p>21 A Well, there was a requirement that they conduct a</p> <p>22 follow-up investigation on information.</p> <p>23 Q Where was that rule?</p> <p>24 A When I say, "a rule", there was a requirement. If</p>
<p style="text-align: right;">Page 43</p> <p>1 THE WITNESS: If they did not tell Higgins, in the</p> <p>2 purest, theoretical sense, yes, he would not know that.</p> <p>3 But I cannot imagine in the Chicago Police</p> <p>4 Department, the way the Detective Division operated back</p> <p>5 then -- I can't speak for now -- that detectives did not talk</p> <p>6 to each other about what they're doing to help each other on</p> <p>7 their cases.</p> <p>8 BY MS. ITCHHAPORIA:</p> <p>9 Q You state in Paragraph 1 of your opinion that the,</p> <p>10 "Fundamental principle in American criminal juris prudence that</p> <p>11 persons charged with the responsibility of criminal</p> <p>12 investigations and criminal prosecutions or to exonerate the</p> <p>13 innocent as well as pursue and prosecute the guilty."</p> <p>14 What fundamental principle are you referring</p> <p>15 to?</p> <p>16 A The fundamental principle of people charged with</p> <p>17 the prosecution function -- and that is both the prosecution</p> <p>18 and police investigation -- are not simply to prosecute and</p> <p>19 convict.</p> <p>20 In virtually every prosecutor's office manual</p> <p>21 and police department training bulletins their obligation is to</p> <p>22 do justice; and that is, you prosecute the ones that the</p> <p>23 evidence shows may be guilty, and you exonerate the ones that</p> <p>24 the evidence shows that they did not commit the crime.</p>	<p style="text-align: right;">Page 45</p> <p>1 I used the word "rule", I meant to use the word "requirement".</p> <p>2 There was a requirement that they follow up information that</p> <p>3 they receive.</p> <p>4 Q Where does that requirement come from?</p> <p>5 A The requirement comes from the body of directives</p> <p>6 currently in the -- the body of directives in existence at that</p> <p>7 time currently in the possession of the Defendant City.</p> <p>8 Q And the directives that you're able to name, is</p> <p>9 that the Detective Division Standard Operating Manual?</p> <p>10 A That's one of them.</p> <p>11 Q Are you able to name any others?</p> <p>12 A The instructions that the detectives received as to</p> <p>13 what the raison d'etre is in the police department; and that is</p> <p>14 to conduct follow-up investigations on information received in</p> <p>15 connection with the report of a crime.</p> <p>16 Q Anything else?</p> <p>17 A As I said, my prior answer, the collection -- the</p> <p>18 body of directives in existence at that time.</p> <p>19 And if you want me to recite the directives,</p> <p>20 again: general orders, special orders, notices, the Operating</p> <p>21 Procedural Manual, training bulletins, field reporting manuals,</p> <p>22 other reporting directives that are the body of directives</p> <p>23 dealing with reporting information in connection with the</p> <p>24 investigation of a crime.</p>

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<p style="text-align: right;">Page 46</p> <p>1 Q Other than giving me this broad overview of the</p> <p>2 body of directives, you can't give me the number or the title</p> <p>3 of any general order or special order that stated that;</p> <p>4 correct?</p> <p>5 A Not from 38 years ago.</p> <p>6 Q And there was nothing that you put in your report</p> <p>7 citing to any general order, or specific order, or any</p> <p>8 directive; correct?</p> <p>9 A I don't have access to any of those directives.</p> <p>10 They're in the possession of the defendant, City of Chicago.</p> <p>11 Q Did you ever ask plaintiff's counsel for any</p> <p>12 general orders, or special orders of Department directives?</p> <p>13 A No.</p> <p>14 Q I want to move on to Paragraph 5D of your report,</p> <p>15 on Page 5. You testified last time that you reviewed your</p> <p>16 testimony from the Palmer litigation; is that correct?</p> <p>17 A That's correct.</p> <p>18 Q What year did you testify in the Palmer case?</p> <p>19 A April 1982. I don't remember the exact date. I</p> <p>20 think it's on the transcript, but I didn't pay attention to it.</p> <p>21 Q And do you remember what date the TRO had been</p> <p>22 entered by the District Court of the Northern District of</p> <p>23 Illinois in the Palmer case?</p> <p>24 A I think it was April of 1982, but I'm not sure if</p>	<p style="text-align: right;">Page 48</p> <p>1 for one more year after that -- I don't recall. And if</p> <p>2 anything was issued subsequent to April of '83, I do not know.</p> <p>3 Q You state in this Paragraph 5D that you also</p> <p>4 testified in the Palmer case that, "Prior to the issuance of</p> <p>5 the TRO and the Department directive, all police officers'</p> <p>6 notes were considered personal, but police officers were</p> <p>7 required to preserve their notes for court testimony and</p> <p>8 incorporate their notes in official reports."</p> <p>9 When you're saying here "required", what made</p> <p>10 that a requirement?</p> <p>11 A What requirement are you talking about?</p> <p>12 Q You testified --</p> <p>13 You're saying that, in Paragraph 5D, that you</p> <p>14 testified in the Palmer litigation that, prior to the issuance</p> <p>15 of the TRO, the Department directed that all police officers</p> <p>16 notes were considered personal and that officers were required</p> <p>17 to preserve their notes for court testimony --</p> <p>18 A Stop right there.</p> <p>19 Q -- so I'm asking in 1980 what made that a</p> <p>20 requirement of detectives?</p> <p>21 A That, again, was somewhere in the collection of</p> <p>22 directives in the Department, and guidelines, that made that a</p> <p>23 requirement. It just was not pulled out of the thin air and</p> <p>24 said, "Well, you're going to do it" or "You're not going to do</p>
<p style="text-align: right;">Page 47</p> <p>1 it was the beginning of the month, end of the month. It could</p> <p>2 have been March. It could have been May. But it was sometime</p> <p>3 in the area of April of '82.</p> <p>4 Q And did that --</p> <p>5 And that was when you were the superintendent;</p> <p>6 correct?</p> <p>7 A That's correct.</p> <p>8 Q Did that -- the TRO that was entered by the</p> <p>9 District Court, did that cause you to issue any sort of orders?</p> <p>10 A I issued a Department notice, which basically was</p> <p>11 our mechanism by which we were going to procedurally implement</p> <p>12 the provisions of the temporary restraining order.</p> <p>13 Q When did you issue the Department notice?</p> <p>14 A You have to look at it as to what the effective</p> <p>15 date is. I don't recall. It was April of '82.</p> <p>16 Q Other than the Department notice, did that cause</p> <p>17 you to issue any sort of general orders or special orders to</p> <p>18 implement the effects of -- to implement the TRO?</p> <p>19 A No. The Department notice is a department-level</p> <p>20 directive which carries with it the same enforceability and</p> <p>21 sanctions for violations thereof as any other Department</p> <p>22 directive, as it applies to the people to whom it is directed.</p> <p>23 Whether or not anything took place in the year</p> <p>24 that I was still superintendent -- I was still superintendent</p>	<p style="text-align: right;">Page 49</p> <p>1 it". Everybody had to preserve their notes. All -- and when</p> <p>2 I'm saying, "everybody", all detectives.</p> <p>3 In fact, even police officers who would make</p> <p>4 notes on their own at the scene in preparation of their case</p> <p>5 report, whatever case they were going to make, were required to</p> <p>6 keep their notes for the purpose of court testimony. That was</p> <p>7 something that was given to everybody going through the Academy</p> <p>8 and class, in terms of report writing, note-taking, and those</p> <p>9 kinds of procedures that are implemented in connection with the</p> <p>10 investigation of a crime.</p> <p>11 Q And you're saying that those documents were in</p> <p>12 effect in 1980?</p> <p>13 A Those documents were in effect in 1980. Those</p> <p>14 documents were in effect in 1964. And those documents were in</p> <p>15 effect, as far as I know, after 1980.</p> <p>16 Q What documents, specifically by name, are you</p> <p>17 referring to?</p> <p>18 A Let's start with training bulletins. Let's start</p> <p>19 with training material in the Academy. Let's start with</p> <p>20 directives within divisions as to maintaining notes and</p> <p>21 preserving notes.</p> <p>22 In fact, I even gave instructions that, when</p> <p>23 you use a notebook, use a notebook that can be opened with</p> <p>24 loose leaf fillers so that, when you can take -- when you do</p>

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<p style="text-align: right;">Page 50</p> <p>1 your notes, you can take your notes out of the notebook and 2 present them to whoever's asking for them at trial without 3 having them look at all the other notes in the book. That was 4 a specific instruction to us as to the type of notebook we 5 should purchase.</p> <p>6 Q Can you give me the date or the number of that 7 training bulletin that said that?</p> <p>8 A The date: 1964. Sometime between June 8th of 1964 9 when I was sworn in and September 4th of '64 when I graduated 10 from the Academy.</p> <p>11 Can I give you a number? No; but I can give 12 you a date of that directive that I knew that existed at that 13 time.</p> <p>14 Q The Department directive that you're referring to 15 here was issued in April of -- well, when was it issued?</p> <p>16 A What directive are you referring to?</p> <p>17 Q The one that you're referring to in your report in 18 Paragraph 5D. You say, "I also testified prior to the issuance 19 of the TRO and the Department directive".</p> <p>20 A Okay. That's in the Department notice that I 21 referred to. Is that correct?</p> <p>22 Okay. "I also testified that prior to the 23 issuance of a temporary retraining order and a Department 24 directive", which means the Department notice that I issued.</p>	<p style="text-align: right;">Page 52</p> <p>1 their possession about witnesses they believed should be 2 polygraphed and other information about those polygraph results 3 as well as any other related information they had regardless of 4 what was documented by the polygraph examiner."</p> <p>5 What specific general order, or special order, 6 or Department guideline addressed a detective's 7 responsibilities and requirements as it relates to polygraphs?</p> <p>8 A I cannot give you a specific directive that relates 9 to polygraph.</p> <p>10 Q You did not look at Sheila Murphy's file that was 11 produced in this case; correct?</p> <p>12 A That's correct.</p> <p>13 Q So you are not able to testify about what documents 14 she had at the time of Mr. Andersen's criminal trial; correct?</p> <p>15 A That's correct.</p> <p>16 MS. ITCHHAPORIA: At this time I'm going to look over any 17 notes, and I'm going to pass the mic on to Stacy over here.</p> <p>18 EXAMINATION 19 BY 20 MS. BENJAMIN: 21 Q All right. You were just asked some questions 22 about notes and their preservation before and after the 23 Department directive that was issued as a result of the TRO. 24 A Yes.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q So that means "notice"? "Department directive" 2 means Department notice?</p> <p>3 A No. A department notice is one type of directive 4 in a department. It could be a general order. It could be a 5 special order. It could be a notice. It could be a bureau 6 special order or a bureau notice, a division special order or 7 notice. It could be a training material.</p> <p>8 If you look at Rule 6 of the Police Department 9 Rules and Regulations, the Rule prohibits violation of any 10 order or directive, whether written or oral. So "directives" 11 is the generic, all-inclusive term for the various kinds of 12 written orders that come down from people who are authorized to 13 issue them.</p> <p>14 Q Okay. But the Department directive that you're 15 specifically referring to here on Page 5, Paragraph 16 5D, that's -- you're referring to the Department notice that 17 you said was issued in April 1982; is that correct?</p> <p>18 A That's correct.</p> <p>19 Q The TRO and the Department notice of April 1982 did 20 not apply retroactively; correct?</p> <p>21 A It did not.</p> <p>22 Q If you look further down on that Paragraph 5D, you 23 state towards, like, the second sentence from the bottom, "In 24 addition, detectives were required to record information in</p>	<p style="text-align: right;">Page 53</p> <p>1 Q Okay. So I want to make sure I'm clear with 2 understanding what you just said.</p> <p>3 Is it your testimony that all Chicago Police 4 Officers -- including detectives, beat officers, and on up -- 5 who have investigated any matter were required to preserve any 6 notes they took even before April of 1982, and that that goes 7 back to at least when you first went through the Academy in 8 1964?</p> <p>9 A That's correct.</p> <p>10 Q And where does that come from? Where does that 11 statement --</p> <p>12 A My recollection, my strongest recollection, was 13 sitting in the classroom in the Police Academy and having the 14 training division instructor teach us about taking notes, as I 15 mentioned, the type of notebook we should use, and preserving 16 the notes for use at trial.</p> <p>17 Q Okay. And were they preserved by the Chicago 18 Police Department, those notes?</p> <p>19 A No. As I said here in my report, the notes were 20 personal, and they were to be maintained by the police officer 21 or detective, if you want that distinction; but they should 22 be -- it was applicable to everybody, as your question 23 adequately covered everyone. Whoever's doing the 24 investigation, making notes, you keep the notes.</p>

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<p style="text-align: right;">Page 54</p> <p>1 Q If a police officer or detective, prior to April of 2 1982, took notes and then incorporated materials from their 3 notes into reports, is it your testimony that it was the rule 4 in the Chicago Police Department before April of 1982 that 5 those notes still had to be preserved?</p> <p>6 A That's correct.</p> <p>7 Q And besides a training instructor who gave you that 8 information, can you point to a specific order, or directive, 9 or any other document published, promulgated, by the Chicago 10 Police Department that made that requirement explicit?</p> <p>11 A I can point to our materials that were handed to us 12 in the Academy as part of the training syllabus; training 13 bulletins on report writing and taking notes.</p> <p>14 And you'd have to search the directives of 15 your client in the archives as to what existed -- what else 16 existed at that time. Those are the things that existed that I 17 personally and specifically remember.</p> <p>18 Q Okay. Then why is it that you had to issue a 19 Department directive in April of 1982 directing people to 20 maintain and retain notes if that was already being done?</p> <p>21 MS. DONNELL: Objection. Form. Assumes facts not in 22 evidence.</p> <p>23 THE WITNESS: Actually, your question is incomplete. I 24 didn't issue the Department notice for them to maintain the</p>	<p style="text-align: right;">Page 56</p> <p>1 A Well, when you say, "required to take notes", they 2 were urged to take notes as part of their work because, as 3 you're gathering information, you cannot possibly remember 4 everybody's name, age, and address with whom you spoke, so you 5 wrote those people's names down; and many times you wrote down 6 what they said even if it was in a shorthand version like, 7 "Didn't see anything" or something like that.</p> <p>8 And the reason being is that it established a 9 credibility in the report that they eventually prepared 10 because, when they were cross-examined on the stand about the 11 report and they listed that they interviewed 13 witnesses, 12 okay, and if they didn't take any notes, a simple question 13 would be, "How do we know -- how do you know where -- "Tell me 14 where John Brown lives". "Well, I would have to look at my 15 report". "Well, what did you look at when you prepared the 16 report? " And he'd say, "My notes". And if he had the notes, 17 he'd produce the notes.</p> <p>18 So if they didn't take notes, it established a 19 credibility question in cross-examination. So we wanted them 20 to document it to keep the chain of the flow going. That was 21 the purpose of it.</p> <p>22 Q Okay. So, for instance, prior to April of 1982, is 23 it your testimony that it was the requirement of the Chicago 24 Police Department that a detective who, say, went out on a</p>
<p style="text-align: right;">Page 55</p> <p>1 notes, as they were maintained prior to the TRO.</p> <p>2 As I wrote in my report here, the difference 3 now is the notes were not kept by the officers and the 4 detectives. They went into the investigative, or running, or 5 street file that was maintained at the Area. That's the 6 difference.</p> <p>7 BY MS. BENJAMIN:</p> <p>8 Q And what about police officers and their notes? 9 Where were they -- was that part of that directive that was 10 issued?</p> <p>11 A My recollection is that the notice -- 12 As I said to you, the notice is a 13 Department-wide directive that applies to people who are to be 14 governed by it. And we were focused at that time in preserving 15 the notes that detectives were making in connection with 16 investigations.</p> <p>17 And we also standardized the note-taking 18 process to -- with the creation of what was called the General 19 Progress Report, or sometimes colloquially known as the GPR. 20 So those were the two functions that -- the focus was on 21 detective note-taking and maintaining those notes in the 22 running file or the street file at the Area.</p> <p>23 Q Okay. Let's go back to 1980. Were detectives 24 required to take notes as part of their work?</p>	<p style="text-align: right;">Page 57</p> <p>1 canvass and went to 10 homes on a street, and nobody saw 2 anything, but he writes down the names of the person at the 3 address that he spoke to, to find out heard and saw nothing, 4 those notes that included the name and address that were then 5 used to create a report should have been retained?</p> <p>6 A Yes.</p> <p>7 Q In 1980?</p> <p>8 A By the detective.</p> <p>9 Q For how long?</p> <p>10 A Until the case is over with and in court.</p> <p>11 Q Until, meaning, there's a conviction or a 12 not-guilty?</p> <p>13 A The case is over, whatever that means.</p> <p>14 Q What does that mean?</p> <p>15 A Yeah. Well, usually the case could be over with on 16 a pretrial motion. The case could be over with with a plea of 17 guilty. The case could be over with a bench or a jury trial 18 resulting in, A, a conviction or, B, an acquittal.</p> <p>19 Q In your experience in the Detective Division, prior 20 to 1982 -- I forget the dates; you were there -- were you aware 21 that notes were ever produced in criminal litigation --</p> <p>22 A When you say --</p> <p>23 Q -- these personal notes that you're referring to?</p> <p>24 A When you say, "produced in criminal litigation",</p>

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<p style="text-align: right;">Page 58</p> <p>1 are you talking about produced as discovery?</p> <p>2 Q Yes.</p> <p>3 A Generally, I do not recall it ever being produced</p> <p>4 in criminal discovery except when the officer or detective</p> <p>5 testifying that, "I prepared my report based on the notes that</p> <p>6 I took". "Do you have those notes with you?" "Yes, I do."</p> <p>7 "Can I see them?"</p> <p>8 And that's when they were shown to the defense</p> <p>9 attorney, because they had to do with the credibility of his</p> <p>10 report. That's what the testing of the cross-examination was</p> <p>11 accomplishing.</p> <p>12 Q So you're saying that the Police Department</p> <p>13 required officers to keep personal notes that they took through</p> <p>14 the conclusion of a criminal matter in order to bolster the</p> <p>15 credibility of their report?</p> <p>16 MS. DONNELL: Objection. Form.</p> <p>17 THE WITNESS: Not to bolster the credibility of the</p> <p>18 report, to establish the basis of the report.</p> <p>19 Using your example, officer does a canvass.</p> <p>20 He goes and interviews 10 people in the area. He gets their</p> <p>21 name, department number, telephone number. They all saw</p> <p>22 nothing. Okay? "How do you remember all of these people you</p> <p>23 interviewed?" "Well, I wrote them down. Here's my notes."</p> <p>24 Okay?</p>	<p style="text-align: right;">Page 60</p> <p>1 Q And you've anticipated my next question.</p> <p>2 There is, to your knowledge, no constitutional</p> <p>3 requirement that police officers maintain their notes from an</p> <p>4 investigation?</p> <p>5 A No, there's no constitutional requirement. It has</p> <p>6 to do with, like a lot of procedures, establishing variability,</p> <p>7 credibility of whatever activity the police are involved in,</p> <p>8 just like there's no constitutional requirement that police</p> <p>9 take pictures of a crime scene, for example, or take a video,</p> <p>10 or have Dash cams, or have body cameras.</p> <p>11 There's no constitutional requirement for</p> <p>12 that, but they do it for a variety of reasons, again, as you</p> <p>13 know from common knowledge, and what you read about and see, to</p> <p>14 establish credibility, what really happened.</p> <p>15 Q Does the --</p> <p>16 You mentioned the Criminal Investigation</p> <p>17 Division Standard Operating Procedure Manual. Did that</p> <p>18 document contain a requirement that detectives maintain notes</p> <p>19 from an investigation?</p> <p>20 A I cannot say with any degree of certainty that it</p> <p>21 did.</p> <p>22 Q Okay. And if in fact that was the policy of the</p> <p>23 Chicago Police Department that detectives do that, would you</p> <p>24 expect to find it in the Criminal Investigation Division</p>
<p style="text-align: right;">Page 59</p> <p>1 But there's another dimension to that. The</p> <p>2 defense attorney can go and find somebody and get them to</p> <p>3 testify that they saw something. Now we already have it</p> <p>4 memorialized that the detectives spoke with him. He said, "I</p> <p>5 saw nothing." So now you have a great impeachment question on</p> <p>6 cross for the prosecutor.</p> <p>7 So it was done for various reasons. It was to</p> <p>8 establish credibility along the line of what the detective had</p> <p>9 written, or the police officer had written, and to obviate the</p> <p>10 occurrence of a witness coming forward who's now testifying</p> <p>11 that they saw all kinds of things happening when they said,</p> <p>12 "No, I didn't see anything happening". So those are reasons.</p> <p>13 Q If the report is identical to the notes, what</p> <p>14 significance do the notes have?</p> <p>15 A The notes are created res gestae of the process</p> <p>16 itself, the interview process. The report is prepared sometime</p> <p>17 later in the station. It could be the same day. It could be</p> <p>18 the next day. So they're the basis upon which the report is</p> <p>19 prepared.</p> <p>20 Q Was there any case law that you were aware of that</p> <p>21 required Chicago Police Officers to maintain notes prior to</p> <p>22 1982?</p> <p>23 A I don't know of any case law prior to 1982, and I</p> <p>24 don't think I'm aware of any case law after 1982.</p>	<p style="text-align: right;">Page 61</p> <p>1 Standard Operating Procedure?</p> <p>2 A Well, A, you could say, yes, one could expect to</p> <p>3 find it. B, you could also say that it was such a routine</p> <p>4 procedure that everybody practiced and knew about at the time;</p> <p>5 it wasn't necessary to include it.</p> <p>6 Q Signing a report would be a routine procedure;</p> <p>7 correct? As routine as it gets; right?</p> <p>8 A Do you mean the person who prepared it?</p> <p>9 Q Correct.</p> <p>10 A Yes.</p> <p>11 Q Okay. Is that something that you would expect to</p> <p>12 find information about what to do about signatures in the</p> <p>13 Criminal Investigation Division Standard Operating Procedures?</p> <p>14 A I think I lost you.</p> <p>15 Q Okay.</p> <p>16 A Say it again.</p> <p>17 Q The matters that were so routine and procedure, the</p> <p>18 purpose of something like a Criminal Investigation Division</p> <p>19 Standard Operating Procedure was to document exactly what those</p> <p>20 routine procedures are; correct?</p> <p>21 A Right.</p> <p>22 Q So one would expect if notes were required to be</p> <p>23 maintained prior to 1982, regarding an investigation, that</p> <p>24 routine procedure would have been included in the Standard</p>

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<p style="text-align: right;">Page 62</p> <p>1 Operating Procedures that you, in part, drafted and edited? I</p> <p>2 think you said "edited".</p> <p>3 A Yeah, there are certain parts I drafted, certain</p> <p>4 parts I edited that were submitted by other people. I had the</p> <p>5 overall responsibility for editing the whole manual.</p> <p>6 Now, what was in there, what was not in there,</p> <p>7 we're now talking about, this year, 47 years, if it came out in</p> <p>8 '71. If it came out in '70, we're talking 48 years. That's</p> <p>9 all I can tell you. I don't -- I can't -- for me to say "yes"</p> <p>10 or "no" would be speculative for either answer.</p> <p>11 Q Okay. You do know that, at least, that this</p> <p>12 Criminal Investigation Division Standard Operating Procedure</p> <p>13 was to make clear what all the routine procedures were for the</p> <p>14 Detective Division or then the Criminal Investigative Division?</p> <p>15 MS. DONNELL: Objection to form.</p> <p>16 BY MS. BENJAMIN:</p> <p>17 Q Is that right?</p> <p>18 A Well, it's not necessarily made clear what all the</p> <p>19 standard or the routine procedures were. There were a lot of</p> <p>20 things addressed there. Okay? And, yes, I think anytime you</p> <p>21 come out with a directive -- whether it's in a manual, or a</p> <p>22 training bulletin, or a general order -- it's done to</p> <p>23 standardize the procedure so everybody is behaving the same way</p> <p>24 and to get this consensus of behavior among everyone so that</p>	<p style="text-align: right;">Page 64</p> <p>1 initial detective responding to the scene, as far as</p> <p>2 possibilities are concerned, there's information that he can</p> <p>3 acquire that's inculpatory or exculpatory.</p> <p>4 Q Okay. So then let's talk about the specific facts</p> <p>5 of the Trunko homicide.</p> <p>6 There is no offender present at the time the</p> <p>7 body is found, correct, to your knowledge of the facts?</p> <p>8 A Yes. Yes.</p> <p>9 Q And when the detectives are investigating, without</p> <p>10 an offender in mind, the question of whether some bit of</p> <p>11 evidence is inculpatory or exculpatory is unknown at that</p> <p>12 point; they're just facts?</p> <p>13 A Yeah. I mean, at that early stage I don't think</p> <p>14 that you can make a judgment as to inculpatory or exculpatory.</p> <p>15 I mean, even in this situation --</p> <p>16 I mean, I always maintain that every detective</p> <p>17 does criminology profiling. You don't need the FBI telling you</p> <p>18 how to criminally profile. They'll come to the scene, and one</p> <p>19 of the first questions they'll ask is "What kind of person</p> <p>20 committed this crime?" That's profiling right there.</p> <p>21 When you look at what you have -- and you're</p> <p>22 correct. It's very preliminary. You don't know what's there.</p> <p>23 So -- and, again, whatever's there may eventually, you know,</p> <p>24 fit into the inculpatory or exculpatory categories, but there's</p>
<p style="text-align: right;">Page 63</p> <p>1 you can have an expectation of how they're going to conduct</p> <p>2 themselves in a given situation. I agree with you on that.</p> <p>3 Q So then you would agree that the note -- retention</p> <p>4 of notes, through the end of a criminal matter would be</p> <p>5 included in that Standard Operating Procedure Manual -- or it</p> <p>6 should be?</p> <p>7 A Yes.</p> <p>8 Q And you have no explanation for why -- if it's not</p> <p>9 in there, why it wasn't included?</p> <p>10 A No, I have none.</p> <p>11 Q I'm going to ask you a couple of questions about --</p> <p>12 In your report, on Page 4, within the</p> <p>13 paragraph of No. 3, the second to the last sentence, "The</p> <p>14 detectives were taught that all relevant facts or information</p> <p>15 must be included in their reports."</p> <p>16 Now, we've also talked a lot about exculpatory</p> <p>17 and inculpatory evidence. When a detective is investigating a</p> <p>18 crime, say, at the scene where it has occurred, and there is no</p> <p>19 offender known at that point, is a detective able to determine</p> <p>20 what facts or evidence is inculpatory or exculpatory at that</p> <p>21 point in time?</p> <p>22 A I don't know. I mean, it's a hypothetical. And I</p> <p>23 think that you can find situations that a detective conducting</p> <p>24 an investigation at the scene -- like, let's say he's the</p>	<p style="text-align: right;">Page 65</p> <p>1 no guarantee.</p> <p>2 Q And, in fact, detectives really don't even have the</p> <p>3 opportunity to make that assessment of whether evidence is</p> <p>4 inculpatory or exculpatory until there is a suspect?</p> <p>5 MS. DONNELL: Objection. Form, to the extent it calls</p> <p>6 for speculation.</p> <p>7 THE WITNESS: I think that there are -- I think that</p> <p>8 there are situations without the suspect. Okay?</p> <p>9 For example, Ms. Trunko was stabbed to death.</p> <p>10 But if they found the body with the knife that caused the</p> <p>11 injuries still in her, okay, I think that that could be</p> <p>12 determined at that point to be more on the inculpatory side</p> <p>13 than the exculpatory side. I think that --</p> <p>14 BY MS. BENJAMIN:</p> <p>15 Q Inculpatory --</p> <p>16 MS. DONNELL: I'm sorry. He didn't finish.</p> <p>17 MS. BENJAMIN: I'm sorry.</p> <p>18 THE WITNESS: Inculpatory of the fact that, whomever may</p> <p>19 have done it, this instrument could be tied to that person.</p> <p>20 That's what I'm talking about.</p> <p>21 BY MS. BENJAMIN:</p> <p>22 Q Well, let's -- let me ask you, then, about</p> <p>23 Mr. Legace and the polygraph that was taken for him -- or that</p> <p>24 he was taken to.</p>

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<p style="text-align: right;">Page 66</p> <p>1 At that point, Daniel Andersen was not a</p> <p>2 suspect in the crime? That was 3 days before his arrest.</p> <p>3 A Yeah, that's correct. I was just trying to get the</p> <p>4 dates in my mind.</p> <p>5 Q Any of the evidence related to his polygraph</p> <p>6 examination, was that inculpatory or exculpatory in relation to</p> <p>7 Mr. Legace?</p> <p>8 A Well, I think he had a situation there that some of</p> <p>9 it was inculpatory and some of it was exculpatory.</p> <p>10 Q And are the detectives trained to consider the</p> <p>11 evidence in terms of inculpatory or exculpatory, or are they</p> <p>12 trained to consider it in terms of pertinent when preparing</p> <p>13 their reports?</p> <p>14 A Well, what you have is pertinent, as you can see</p> <p>15 from the Field Reporting Manual, which was my Exhibit 9 to</p> <p>16 which I testified to earlier up in the first paragraph, it's</p> <p>17 pertinent. Right? But then you have pertinent inculpatory and</p> <p>18 pertinent exculpatory.</p> <p>19 Q Can the pertinence (sic) -- I don't know if</p> <p>20 that's even a word -- of evidence, is that assessed at the time</p> <p>21 that the evidence is observed or known, or are detectives</p> <p>22 expected to keep considering that throughout an investigation?</p> <p>23 A Well, I will agree that what could initially be</p> <p>24 pertinent could become impertinent later on. I think that most</p>	<p style="text-align: right;">Page 68</p> <p>1 Cathy Trunko and never found her. Is it possible that that</p> <p>2 information is assessed as impertinent by the time you have</p> <p>3 information that someone else has confessed to the crime?</p> <p>4 MS. DONNELL: Objection. Form.</p> <p>5 THE WITNESS: Well, again, how you posited the question</p> <p>6 to me, Mr. Legace went out to look for Cathy Trunko and said</p> <p>7 he could not find her. That's --</p> <p>8 BY MS. BENJAMIN:</p> <p>9 Q Let's just go with that being true.</p> <p>10 MS. DONNELL: I'm sorry. You interrupted his answer.</p> <p>11 BY MS. BENJAMIN:</p> <p>12 Q Okay. You can finish.</p> <p>13 A As to the issue as to whether or not he found her,</p> <p>14 is only, thus far, determined by his own statement that he did</p> <p>15 not find her. So knowing that -- and it's his statement that</p> <p>16 he did not find her. Okay?</p> <p>17 The confession 3 or 4 days later from another</p> <p>18 person may or may not render that presumption that he didn't</p> <p>19 find her impertinent. It may. I'm not sure, because I was not</p> <p>20 asked to and I did not look at the facts and circumstances and</p> <p>21 the totality of the confession.</p> <p>22 Q So assuming the confession -- this is a</p> <p>23 hypothetical. Mr. Legace -- it was learned by police that he</p> <p>24 went out to look for Cathy Trunko the night she was murdered.</p>
<p style="text-align: right;">Page 67</p> <p>1 detectives are trained to consider everything pertinent</p> <p>2 initially until they sort things out a little bit; and then</p> <p>3 they can get into the classifications as to whether or not it's</p> <p>4 pertinent or impertinent.</p> <p>5 And then under "pertinent", inculpatory or</p> <p>6 exculpatory. Once you determine that something is impertinent</p> <p>7 it has no useful investigatory (sic) or evidentiary value to</p> <p>8 that particular case.</p> <p>9 Q And whether or not something is pertinent is, in</p> <p>10 the end, a subjective determination by an individual officer?</p> <p>11 A I would not say "in the end". I would say at the</p> <p>12 beginning it could be a subjective determination; "This is</p> <p>13 pertinent"; "This is not pertinent". That's why it's always</p> <p>14 safe to consider everything pertinent until you have</p> <p>15 non-subjective bases to make it impertinent.</p> <p>16 In the end I think that it's more focused and</p> <p>17 more clear as to what's pertinent and impertinent because you</p> <p>18 have a quantum of information that is much, much greater than</p> <p>19 you had when you first started.</p> <p>20 Q And would you agree that a situation where an</p> <p>21 investigation -- a confession is made, that earlier information</p> <p>22 may then be looked at differently and become impertinent based</p> <p>23 on the confession?</p> <p>24 For instance, Mr. Legace went out to look for</p>	<p style="text-align: right;">Page 69</p> <p>1 He gave a polygraph that did not indicate deception. And 3</p> <p>2 days later police were given a confe- -- heard a confession</p> <p>3 from another man who accounted for all parts of the crime and</p> <p>4 did not include Mr. Legace in any way.</p> <p>5 In that circumstance, is it reasonable to</p> <p>6 expect a police officer to believe that the information about</p> <p>7 Legace going out to look for Cathy Trunko is impertinent</p> <p>8 information at that point?</p> <p>9 MS. DONNELL: Objection. Form. Calls for speculation.</p> <p>10 Incomplete hypothetical.</p> <p>11 THE WITNESS: The premises upon which you based your</p> <p>12 question, from the materials that I read, are not consistent</p> <p>13 with what happened. You know, that's what I'm saying.</p> <p>14 I personally think that, despite the fact that</p> <p>15 they didn't report it, the police knew that Legace went out to</p> <p>16 look for Cathy Trunko; but that's not memorialized in any of</p> <p>17 their reports, as I recall. That's number one.</p> <p>18 Your second premise was that Legace was</p> <p>19 polygraphed. And in reading Stout's reports, Legace was not</p> <p>20 polygraphed. Stout determined that while Legace was not trying</p> <p>21 to defeat or undermine the purpose of a polygraph exam, he</p> <p>22 identified him as a subject who is not fit to be given a</p> <p>23 polygraph exam.</p> <p>24 So if he's not fit to be given a polygraph</p>

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<p style="text-align: right;">Page 70</p> <p>1 exam, no matter what Stout may have tried do by strapping him</p> <p>2 up with the machine, he did not submit to a polygraph exam</p> <p>3 because there was no polygraph exam. They couldn't examine</p> <p>4 him. Okay?</p> <p>5 Just like if somebody is a double-amputee of</p> <p>6 the lower limbs, you can't check the fingerprints on their feet</p> <p>7 or their toes, because they're not there. It's the same thing.</p> <p>8 So those two premises that you just gave me are premises that</p> <p>9 are not consistent with what information I read in the</p> <p>10 documents.</p> <p>11 But knowing that, for me to answer the</p> <p>12 question, can I just have the part that's the interrogatory of</p> <p>13 your question without the premises? I can try to answer it.</p> <p>14 BY MS. BENJAMIN:</p> <p>15 Q What I'm trying to get at -- and I can rephrase the</p> <p>16 question because it's taking you on a longer answer. And I'm</p> <p>17 not trying to trip you up or anything. Let me start again.</p> <p>18 So my question to you is, pertinent</p> <p>19 information in investigation -- in a detective investigation is</p> <p>20 a subjective assessment by the detectives working the case at</p> <p>21 any specific period of time, correct, whether something is</p> <p>22 pertinent or not?</p> <p>23 A That's correct. I mean, at some point that</p> <p>24 determination is a subjective determination based upon the</p>	<p style="text-align: right;">Page 72</p> <p>1 to the machines, we have tapes of that examination, because the</p> <p>2 result of that examination was that he was unfit, it's your</p> <p>3 belief that the polygraph doesn't count, that that just didn't</p> <p>4 exist then? I'm confused.</p> <p>5 MS. DONNELL: Objection. Form. Argumentative.</p> <p>6 THE WITNESS: The way you described it, factually, as to</p> <p>7 what happened, is accurate. And I'm not claiming to be any</p> <p>8 expert on those scraggly lines on a piece of paper that are the</p> <p>9 measurements of what the polygraph examiner measures from the</p> <p>10 physiological standpoint. Okay?</p> <p>11 I am saying that the fact that somebody goes</p> <p>12 through the process and the result is he is an unfit subject</p> <p>13 for a polygraph exam does not square that he submitted to a</p> <p>14 polygraph exam which was concluded by the examiner to be able</p> <p>15 to render an opinion as to the truthfulness, untruthfulness, or</p> <p>16 inclusivity (sic) -- that's not the right word -- the</p> <p>17 inconclusiveness of his responses.</p> <p>18 Stout rendered no opinion on any response</p> <p>19 because there was no response to measure in accordance with the</p> <p>20 standards set by the polygraphy industry.</p> <p>21 BY MS. BENJAMIN:</p> <p>22 Q Are you speaking on behalf of your own personal</p> <p>23 understanding of polygraphs and what the results in this</p> <p>24 particular case meant or didn't mean, or are you speaking on</p>
<p style="text-align: right;">Page 71</p> <p>1 detective's training and experience.</p> <p>2 Q And as an investigation proceeds, evidence that may</p> <p>3 have been thought to be pertinent at one time can become</p> <p>4 impertinent, as you described earlier?</p> <p>5 A That's correct.</p> <p>6 Q And it's true that impertinent information is not</p> <p>7 required to be included in detective reports?</p> <p>8 A That's correct.</p> <p>9 Q I just want to clarify something in your answer</p> <p>10 before.</p> <p>11 Is it your belief, based on your review of the</p> <p>12 record, that Mr. Legace did not actually submit to a polygraph</p> <p>13 examination?</p> <p>14 MS. DONNELL: Objection. Misstates his testimony.</p> <p>15 THE WITNESS: No. It's my belief that he agreed to take</p> <p>16 a polygraph examination. Your premise to me was that he was</p> <p>17 polygraphed. That, to me, means that someone has undergone a</p> <p>18 polygraph examination.</p> <p>19 Mr. Legace did not undergo a polygraph</p> <p>20 examination because, in the professional opinion of the</p> <p>21 polygraph examiner, Mr. Stout, Mr. Legace was not a fit subject</p> <p>22 to be examined by polygraph.</p> <p>23 BY MS. BENJAMIN:</p> <p>24 Q So despite the fact that Mr. Legace was hooked up</p>	<p style="text-align: right;">Page 73</p> <p>1 the way the Chicago Police Department assessed the polygraph</p> <p>2 evidence -- or should have assessed the polygraph evidence in</p> <p>3 this case in 1980?</p> <p>4 A I'm speaking --</p> <p>5 MS. DONNELL: Objection. Form.</p> <p>6 THE WITNESS: I'm speaking on the basis of the way</p> <p>7 Mr. Stout regarded the results -- or put it this way: how</p> <p>8 Mr. Stout regarded the attempt to get polygraph results from</p> <p>9 Mr. Legace.</p> <p>10 BY MS. BENJAMIN:</p> <p>11 Q Okay. So just so we're clear, you were not</p> <p>12 speaking on behalf of the Police Department's understanding of</p> <p>13 the results of the polygraph in this case, of how it should</p> <p>14 have been interpreted by the Chicago Police Department and</p> <p>15 thereby the detectives in this case?</p> <p>16 A Well, to answer your question, I don't know what</p> <p>17 anybody in the police department could have or should have done</p> <p>18 other than embrace what Stout told them. Because in that cast</p> <p>19 of characters the people who are named as employees of the</p> <p>20 police department in all of these reports, the only one who</p> <p>21 knows what he's talking about with the polygraph is Mr. Stout.</p> <p>22 I don't think Rochowicz, Bedran, Higgins,</p> <p>23 anybody else you -- McWeeny or anybody else you want to</p> <p>24 mention, okay -- I don't think they have any idea what Stout</p>

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<p style="text-align: right;">Page 74</p> <p>1 really does. I mean, they have an idea overall; but I'm 2 talking about they are, in my opinion, as incapable in 3 interpreting any of those squiggly lines on those papers as I 4 am because I have no idea what they mean. So that's what I'm 5 saying there.</p> <p>6 So when you say interpreted by the Police 7 Department, you know, the Police Department, as said in my 8 earlier -- in my report, the Police Department only knows he's 9 an unfit subject. Okay? I don't know if there's any 10 opportunity where he can become a fit subject. I don't know 11 that. But I do know that there was information obtained from 12 Legace during the pre-polygraph interview. There was 13 information given to Stout by Bedran and Rochowicz prior to the 14 polygraph exam. That information is important with or without 15 the machine operating, with or without Legace being a qualified 16 or a fit subject for a polygraph. That's conversation. That's 17 verbal.</p> <p>18 Q And what information about that interview was 19 pertinent to the investigation of Cathy Trunko's homicide at 20 the time it was supposedly given to Rochowicz and Bedran?</p> <p>21 A Well, let's back up.</p> <p>22 There was information given by Bedran and 23 Rochowicz to Stout. Let's start with that information. There 24 were suspicions, in their minds at least, to get them to take</p>	<p style="text-align: right;">Page 76</p> <p>1 additional information. I thought that this person was not 2 telling me the truth about the situation, but I found out later 3 that the reason why he said the guy had a gray tie on is 4 because he's color blind. Those kinds of things.</p> <p>5 Q In Exhibit 9, the General Reporting Instructions 6 for the Field Reporting Manual, there is nowhere in this 7 instruction manual that instructs police officers, or any 8 Chicago Police Officer preparing a report, to include 9 suspicions in their reports.</p> <p>10 A Well, look at Roman Numeral I, Capital A, Arabic 2, 11 the second paragraph from the top, "A field case report 12 provides a record of a completed investigation or establishes 13 the basis for a follow-up investigation by criminal 14 investigation either through vice control division or 15 personnel".</p> <p>16 Now, if you have some suspicions as a 17 uniformed officer and you put those in the report, it's 18 something that the detectives could follow up on right there.</p> <p>19 Q Okay. So why don't you turn to Page 6 of this 20 document?</p> <p>21 A Of this same document?</p> <p>22 Q Yes. Letter P, the narrative section.</p> <p>23 MS. DONNELL: Just so you know, you have about 5 minutes. 24 BY MS. BENJAMIN:</p>
<p style="text-align: right;">Page 75</p> <p>1 him down for a polygraph. Whether he was being taken down as a 2 witness to see if they can verify what they have may have 3 thought was question credibility or to see if they can get any 4 responses from him that would assist them in determining 5 whether or not he's a suspect; so that's where we have to 6 start, there.</p> <p>7 So they knew certain things that they told 8 Stout, as was recorded in Stout's notes. And Stout told them 9 certain things, as was recorded in Stout's notes.</p> <p>10 Q Are police officers trained to include suspicions 11 in their reports?</p> <p>12 MS. DONNELL: Objection. Form.</p> <p>13 THE WITNESS: Include suspicions?</p> <p>14 BY MS. BENJAMIN:</p> <p>15 Q Yes, as you just used it in your previous answer.</p> <p>16 A I think that -- I think that it's a matter of 17 routine when you talk about a possible suspect and identify 18 that person. They talk about suspicions, in terms of if they 19 need to do additional follow-up because they feel that someone 20 may not be telling them the truth or the whole truth. They may 21 include suspicions where they think that some information given 22 to them by an individual is a canard.</p> <p>23 There's nothing wrong with putting down these 24 suspicions. And you can always explain the suspicions later by</p>	<p style="text-align: right;">Page 77</p> <p>1 Q The narrative section of reports, in general, is 2 where the substantive information is provided, correct, 3 generally?</p> <p>4 A Yes. Yes, the narrative section.</p> <p>5 Q All right. So look at No. 2.</p> <p>6 A Okay.</p> <p>7 Q "Reporting officers are to eliminate their 8 conclusions, opinions, feelings, and evaluations of witnesses 9 from the narrative portion of their original case report. 10 Conclusions on the part of the writer, whether based on 11 deduction or personal feelings, should not be made."</p> <p>12 MS. DONNELL: I'd just object to the extent that you 13 excluded the word "report writer".</p> <p>14 BY MS. BENJAMIN:</p> <p>15 Q I'm sorry. "Conclusions on the part of the report 16 writer, whether based on deduction or personal feelings, should 17 not be made."</p> <p>18 A Okay.</p> <p>19 Q Wouldn't that include suspicions?</p> <p>20 A If that's a personal feeling not supported by 21 anything, then you don't put it in there. But if --</p> <p>22 Q "Suspicion" and "opinion" are --</p> <p>23 MS. DONNELL: I'm sorry. I think you interrupted him. 24 BY MS. BENJAMIN:</p>

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<p style="text-align: right;">Page 78</p> <p>1 Q I'm sorry. Go ahead.</p> <p>2 A Well, if you -- if you have some basis for a</p> <p>3 suspicion other than your personal feelings, then you put it</p> <p>4 in. But if we just say, "It's my gut reaction because of the</p> <p>5 way she wears her hair that she's not telling the truth",</p> <p>6 that's a personal opinion.</p> <p>7 Q Well, evaluations of witnesses, that's a suspicion?</p> <p>8 A Not necessarily. Evaluations of witnesses could</p> <p>9 be, "I was speaking with John Doe, and he wouldn't look me in</p> <p>10 the eye. He was looking all over. He seemed very nervous."</p> <p>11 Is that an observation of mine, it's</p> <p>12 suspicious that he may not be wanting to talk to me? That</p> <p>13 wouldn't be important to put in my report? I would put it in</p> <p>14 the report.</p> <p>15 Q Did you, in your career, ever conduct any homicide</p> <p>16 investigations?</p> <p>17 A Yes.</p> <p>18 Q How many?</p> <p>19 A I don't recall.</p> <p>20 Q Is it more than 10?</p> <p>21 A If I say, "I don't recall", I couldn't tell you if</p> <p>22 it was 10, 20, 15. I don't know.</p> <p>23 Q Can you tell me if it was less than a hundred?</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 80</p> <p>1 officers to conduct homicide investigations?</p> <p>2 A Of treating officers?</p> <p>3 Q Training.</p> <p>4 A Training?</p> <p>5 Q Yes.</p> <p>6 A I know that I lectured at the Academy on subjects</p> <p>7 like interviews and interrogations. I sometimes gave law</p> <p>8 lectures there primarily on procedure. Those classes would</p> <p>9 have included people who were going to be homicide detectives;</p> <p>10 or, in in-service training, people who are homicide detectives.</p> <p>11 Q Did you train on report writing?</p> <p>12 A I'm sorry?</p> <p>13 Q Did you train detectives on report writing?</p> <p>14 A Not that I recall.</p> <p>15 Q Did you train detectives on determining what</p> <p>16 information was pertinent to an investigation?</p> <p>17 A I think that, in the training that I did, in terms</p> <p>18 of the word "including pertinent information", I'm sure that</p> <p>19 that dimension of the investigation came up in one or more of</p> <p>20 my presentations.</p> <p>21 Q And how did it come up?</p> <p>22 A Well, many times when you're making a class</p> <p>23 presentation like that, especially with people who are</p> <p>24 pre-service detectives and in-service detectives, you have</p>
<p style="text-align: right;">Page 79</p> <p>1 Q Can you tell me if it was more than 10?</p> <p>2 A Yes.</p> <p>3 Q And you can't narrow it down anywhere in between</p> <p>4 there?</p> <p>5 A Despite the fact that I think I can remember fairly</p> <p>6 well, I don't remember specific numbers.</p> <p>7 Q And in those investigations that you investigated</p> <p>8 that were homicide investigations were you the assigned</p> <p>9 detective?</p> <p>10 A No.</p> <p>11 Q Were you ever the assigned detective at a</p> <p>12 homicide --</p> <p>13 A No, I never was a detective in the Detective</p> <p>14 Division. I was a sergeant. I was a youth officer assigned to</p> <p>15 murder investigations also. As I testified, we investigated</p> <p>16 crimes by and against children, minors; but if the case</p> <p>17 assignment slip for a murder investigation was, or had, or</p> <p>18 contained a homicide detective's name on it.</p> <p>19 Q Okay. So based on your answer, is it correct that</p> <p>20 you never had the responsibility of an assigned detective for</p> <p>21 any homicide investigation in your career?</p> <p>22 A That's correct. That's correct, because I never</p> <p>23 was a detective.</p> <p>24 Q Have you ever had the responsibility of training</p>	<p style="text-align: right;">Page 81</p> <p>1 people that have demonstrated an ability by passing a written</p> <p>2 examination. And, therefore, they have an ability to think for</p> <p>3 themselves and they ask questions, and the questions could be a</p> <p>4 myriad of questions.</p> <p>5 And depending upon the particular position</p> <p>6 that I was holding at the time, many of them thought that they</p> <p>7 would seek out an answer from me because of the position that I</p> <p>8 was holding.</p> <p>9 Q So --</p> <p>10 MS. BENJAMIN: If you could read back my question,</p> <p>11 please.</p> <p>12 (Whereupon, the record was read as</p> <p>13 requested.)</p> <p>14 BY MS. BENJAMIN:</p> <p>15 Q Okay. So how is it that you were training</p> <p>16 detectives on how to determine what evidence an investigation</p> <p>17 was pertinent or not, or have I misunderstood you and that was</p> <p>18 not part of your training?</p> <p>19 A No. No. If we were doing a class on some updates</p> <p>20 in the law or changes in the law, we'd always get into matters</p> <p>21 involving pertinent evidence, pertinent facts, pertinent</p> <p>22 matters.</p> <p>23 For example, when we did the -- when the</p> <p>24 Supreme Court decided a case on the procedure to conduct a</p>

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1 constitutional line-up, we got into pertinent facts over there,
 2 in terms of similarity of appearance, what they had to do to
 3 get the line-up properly conducted, you know, being able to
 4 have each person in the line-up, repeat the words of the
 5 offender, photographing the line-up.

6 MS. BENJAMIN: I will leave the last few minutes to Misha
 7 if she has any.

8 MS. DONNELL: Do we have a minute?

9 THE VIDEOGRAPHER: No. We're at 2:08.

10 MS. DONNELL: At 2:08. You're done.

11 MS. ITCHHAPORIA: Do you have any questions?

12 MS. DONNELL: No, I'm not going to have any questions.

13 THE VIDEOGRAPHER: Off the record at 5:23 p.m.

14 THE REPORTER: Signature?

15 MS. DONNELL: We'll waive signature.

16 FURTHER DEPONENT SAITH NAUGHT...

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1 STATE OF ILLINOIS)
) SS:

2 COUNTY OF COOK)
 3

4 Devan J. Moore, being first duly sworn on
 5 oath, says that she is a Certified Shorthand Reporter, that she
 6 reported in shorthand the testimony given at the taking of said
 7 deposition and that the foregoing is a true and correct
 8 transcript of her shorthand notes so taken as aforesaid and
 9 contains all the testimony given by the deponent at said
 10 deposition.

11
 12 And further, that she is not connected by
 13 blood or marriage with any of the parties to this action, nor
 14 is she a relative or employee or attorney or counsel of any of
 15 the parties, or financially interested directly or indirectly
 16 in the matter in controversy.

17 
 18

19 Certified Shorthand Reporter

20 License No. 084 004589

21 This 21st day of January
 22 2019.
 23
 24

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